Illinois Official Reports

Appellate Court

In re Benny M., 2015 IL App (2d) 141075

Appellate Court Caption	_In re_ BENNY M., Alleged to Be a Person Subject to Involuntary Treatment (The People of the State of Illinois, Petitioner-Appellee, v. Benny M., Respondent-Appellant).
District & No.	Second District Docket No. 2-14-1075
Filed	November 2, 2015
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 14-MH-103; the Hon. Robert K. Villa, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	Laurel Spahn, of Guardianship & Advocacy Commission, of Hines, for appellant. Joseph H. McMahon, State's Attorney, of St. Charles (Lawrence M. Bauer and Diane L. Campbell, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Justices Zenoff and Spence concurred in the judgment and opinion.

OPINION

¶ 1 The respondent, Benny M., appeals from the October 3, 2014, order of the circuit court of Kane County granting the State's petition to subject him to involuntary treatment with psychotropic medication. On appeal, the respondent argues that he was denied a fair trial when the trial court denied his request to remove his shackles during the hearing, without making any findings that such shackling was necessary, and that the appeal falls within exceptions to the mootness doctrine. We agree and reverse.

¶ 2 BACKGROUND

¶ 3 On August 26, 2013, the State filed a petition seeking to involuntarily medicate the respondent for a period of up to 90 days. This was the second such petition. According to Dr. Donna Luchetta, a psychiatrist with the Elgin Mental Health Center, at some point in the past, the respondent had been charged with domestic battery against his mother, but had been found unfit to stand trial. The respondent was assigned to the Forensic Treatment Program at the mental health center. He was medicated and at some point was found fit to stand trial. However, after he was transferred to a jail, he stopped taking his medication and was again found unfit to stand trial.

¶ 4 Dr. Luchetta had diagnosed the respondent with schizoaffective disorder. The petition did not allege that the respondent had behaved in a threatening or violent manner. Rather, it alleged that the respondent was suffering and that his ability to function had deteriorated since the previous order expired and the respondent stopped taking psychotropic medication. Dr. Luchetta testified that the respondent's condition manifested in delusions that he had no mental illness and did not need to take medication. It also made him argumentative. In the past, he had had severe mood swings, ranging from depressive periods when he would remain in bed for days to hyperelation when he would attempt to kiss the psychology interns.

¶ 5 A two-day hearing on the petition was held on September 5 and 19, 2014. On the first day of the hearing, the respondent's shackles were removed upon his arrival in the courtroom. However, on September 19, the respondent's shackles were not removed.

¶ 6 At the start of the hearing on September 19, the respondent's counsel raised the issue of the shackles, asking the court that the shackles be removed. The following colloquy occurred:

> "THE COURT: Is there any objection to that? Is there any reason for that now in the courtroom? For security purposes, is there anything I should know about, or–
>
> THE SECURITY OFFICER: He's listed as high elopement risk.
>
> [RESPONDENT]: I figured that.
>
> THE SECURITY OFFICER: I have documentation if you would like to see that.
>
> THE COURT: I would be happy to, if that's what security is representing to the court. *** I don't think there is any reason to doubt the veracity. I will review them.
>
> (Pause.)
>
> THE COURT: Have you had a chance to review this beforehand?
>
> MS. BLAKE [Respondent's attorney]: No, Judge.

THE COURT: Patient transport checklist.[1]

[RESPONDENT]: I just want to say something. High risk case for elopement, where am I going to go? I'm trapped.

MS. BLAKE: Be quiet.

[RESPONDENT]: I said I wanted to be here, and I was willing to even be present in this crap. This is kind of interesting. I mean I can laugh about it, too. I have a sense of humor.

THE COURT: I will leave him in custody in the shape he is in now. The request is denied."

The hearing then proceeded with the calling of a witness for the resumption of the respondent's attorney's cross-examination. The respondent's attorney requested that the respondent's right hand be unshackled so he could take notes during her cross-examination of the witness:

"MS. BLAKE: Judge I would ask if at a minimum that my client–my client's right hand be–

[RESPONDENT]: Do you think I am going to take the pen or something and try to stab someone with it?

MS. BLAKE: –right hand being taken out so he can take some notes, if I have any questions or there's issues that we need to raise.

THE COURT: There's obviously got to be a balance of whatever security feels is necessary and his ability to participate. Do you feel that he is unable to participate in the court proceedings–

[RESPONDENT]: I haven't participated in a lot of different areas.

THE COURT: –with his hands restrained?

MS. BLAKE: Certainly with his right hand restrained, yes.

THE COURT: Are you right-handed, Mr. M***?

[RESPONDENT]: I use both of my hands.

THE COURT: For writing purposes?

[RESPONDENT]: Writing purposes? I would try to use my left hand as well because I'm not saying most or everyone, but people tend to try different things, have to learn how to write with both.

THE COURT: Okay. I just want to know.

[RESPONDENT]: If one hand is hurting or whatever, or for some reason, like if someone loses their hand–

THE COURT: Here's what we're going to do.

[RESPONDENT]: –through amputation, they may be forced to use their left hand.

THE COURT: If there is need to take notes, I will consider your request.

[RESPONDENT]: I'm speaking, which is even better.

THE COURT: Ms. Blake, whenever you are ready.

[1]Although the court indicated that the document was a patient transport list, the document was not entered into evidence and is not contained in the record on appeal.

MS. BLAKE: Thank you.

[RESPONDENT]: I don't have paper and pencil. This doesn't make sense. People are saying I'm crazy and acting out. I disagree. So talk to myself [*sic*], in my head, so either everybody or nobody–

THE COURT: Mr. M***, please listen to your counsel. I understand you might be a little frustrated at the moment, but I don't want to have you removed from here. The best thing for you to do would be to participate. I understand there is some limitations [*sic*] at this point. If there is a need for you to be writing down some notes or things of that nature, I will consider it at that time. I'm trying to do the best to balance both the security information given to me and your ability to participate."

¶ 7 Over the next few hours as the hearing continued, the respondent made occasional verbal interjections. Sometimes, his comments indicated a desire to participate in his own defense, such as by asking questions or providing information related to the questioning of the witness. On other occasions, the interruptions were in the nature of commentary on the witness's testimony. The trial court admonished him to stay quiet and allow his counsel to represent him and said that he would be removed from the courtroom if he persisted.

¶ 8 The respondent remained in shackles throughout the hearing. Certain comments by the respondent indicated that the shackles were bothering him. For instance, while he was testifying (having been called as a witness by the State), he was asked about whether he had been utilizing nonmedical ("lesser restrictive") treatment options while at the Elgin Mental Health Center. He responded, "Lesser restrictive treatment? How do you define–right now I'm shackled. I got cuffs. I'm–I'm in restraints is another way of putting it." When asked a similar question later, he noted that the shackles were "very restrictive." He testified that he had not been shackled when he was in the mental health center and was only shackled when he was brought to court, and not always then. At the end of the respondent's testimony, when he was told that he could step down from the witness stand, he said, "If I am still able to walk."

¶ 9 When the State began its closing argument, it argued that the court could see for itself the deterioration in the respondent between the first hearing date two weeks earlier, when the respondent was able to sit still without interrupting, and the present day (September 19), when he had more difficulty refraining from making interruptions. After the State began to refer to an incident in which the respondent kissed an intern on the cheek without her consent, the respondent became agitated. The trial court advised the respondent that the next time he interrupted the proceedings the trial court would remove him from the courtroom. The following colloquy occurred:

"[RESPONDENT]: It's crazy.

THE COURT: I will ask him to leave now, please.

MS. BLAKE: Judge, just for the record, he's been complaining about the shackles the whole hearing.

THE COURT: I have not heard that.

MS. BLAKE: He's been complaining to me.

THE COURT: I have heard him complain about the language that's being used to describe people. I have heard him interrupt and criticize or comment on what Dr.

Luchetta has testified to. I have not heard that. I have heard out loud comments unrelated to the shackles.

MS. BLAKE: But he has had to stand up because he's been in pain.

THE COURT: And none of those items have ever been a problem for me."

The respondent then interjected to explain that he had been trying to say something about the "peck on the cheek," and the trial court said, "See what I mean? That's not shackle-related." The respondent then complained that the security officer had "tightened it." The security officer denied doing anything. The respondent asked if the shackles could be removed, and the security officer told him, "No, I cannot take them off of you. Let's go out here, and I'll fix them up for you. I'll see what I can do." The respondent responded, "I don't need you to take hold of my arm. I need you to take these damn cuffs off. My feet first, hopefully." Referring to the basis for the petition to medicate him (his alleged suffering and deterioration), he continued, "This is why I'm suffering and deteriorating. I mean look at this. I'm walking like a cripple, and I'm not." At that point, the respondent was escorted from the courtroom. The transcript does not reflect that he reentered before the hearing concluded.

¶ 10 In her closing argument, the respondent's attorney addressed the State's argument that the court's own observations would support medicating the respondent, arguing that the respondent was frustrated in part because he had been shackled during the hearing that day despite the fact that he was not required to wear shackles anywhere else. She noted that, although the record might not reflect it, the respondent had stood up several times during the hearing and had indicated that he was having cramps. The trial court stated that it was certain that any such complaints were not part of the record, because the court "would have possibly addressed them if he had made them or you had made them on his behalf directly to me." The respondent's attorney apologized for not putting the respondent's complaints on the record each time they were made, saying that she should have done so. After she noted that the respondent had complained to the security officer, the State objected, and the trial court stated that nothing was in evidence. The hearing concluded a short time later.

¶ 11 On October 3, 2014, the trial court granted the petition to subject the respondent to involuntary medication. In stating the reasons for its ruling, the trial court commented that it had taken into account the respondent's "outbursts in the courtroom with a significant amount of animosity and argumentativeness." The respondent frequently interrupted the trial court as it gave its ruling, at one point saying, "I don't want to be chained." Following the hearing, the respondent filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 On appeal, the respondent contends that he was denied a fair trial when the trial court failed to remove the shackles during his hearing, without stating the basis for keeping him shackled. He also argues that, although this appeal is moot, it falls within exceptions to the mootness doctrine. We agree on both points. In explaining why, we begin with the latter point.

¶ 14 Mootness and Exceptions

¶ 15 "An appeal is moot if 'no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief.' " *In re*

Marriage of Eckersall, 2015 IL 117922, ¶ 9 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005)). Although a court generally should not address an issue that is moot, it may do so if one of the recognized exceptions to the mootness doctrine applies. *Id*. Here, the respondent argues that two exceptions apply: the issue involves an event of short duration that is "capable of repetition, yet evad[es] review" (internal quotation marks omitted) (*In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)), and the issue is of public interest (*Marriage of Eckersall*, 2015 IL 117922, ¶ 9).

¶ 16 To establish that the first exception applies, the complaining party must show that: (1) the challenged action is of such short duration that it cannot be fully litigated prior to its cessation and (2) there is a reasonable expectation that the same party would be subjected to the same action again. *In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009).

¶ 17 The parties agree that both prongs of this test are met here, and the record supports their assertion. First, the order of involuntary medication was set for 90 days, a duration too short to permit appellate review. As to the second element, the current appeal involves the second petition for the respondent's involuntary treatment and, due to the respondent's ongoing mental health needs and pending criminal charges, it is reasonably likely that the State will file another petition to subject him to the involuntary administration of psychotropic medication. Thus, it is reasonable to expect that in the future the respondent will be subjected to the same action, at which time the same issue of whether he should be shackled during the hearing will again arise. Therefore, we find that the issue is capable of repetition yet evades review. *Id*.

¶ 18 We also find that this appeal meets the requirements for the second exception to the mootness doctrine, the public interest exception. "The criteria for application of the public interest exception are: (1) the public nature of the question; (2) the desirability of an authoritative determination for the purpose of guiding public officers; and (3) the likelihood that the question will recur." *In re James W.*, 2014 IL 114483, ¶ 20. As to the first prong, where "the issue was one of general applicability to mental health cases" and would "affect the procedures that must be followed" in mental health proceedings, our supreme court has held that the issue is " 'of a public nature and of substantial public concern.' " *In re Rita P.*, 2014 IL 115798, ¶ 36 (quoting *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002)).

¶ 19 The second prong of the public interest exception is also met. Although the law is well settled regarding the factors that must be considered when the issue of shackling arises in a *criminal* trial (see, *e.g.*, Ill. S. Ct. R. 430 (eff. July 1, 2010); *People v. Allen*, 222 Ill. 2d 340, 347-48 (2006); *People v. Boose*, 66 Ill. 2d 261, 266-67 (1977)), there is uncertainty regarding whether the same factors must be considered when the proceeding is a *civil* proceeding in which the fundamental rights of the respondent are at issue (see *In re Mark P.*, 402 Ill. App. 3d 173, 176-77 (2010) (reviewing court noted that there was "no precedent" on the question of whether a trial court must consider the factors identified in *Boose* and Rule 430 when the issue of shackling arises in a civil commitment proceeding, but found that it need not answer this question, because the trial court there did not conduct any meaningful consideration of whether the respondent should be shackled but simply adopted the determination of the sheriff's deputies)); see also *In re A.H.*, 359 Ill. App. 3d 173, 182-83 (2005) (it was unclear whether all of the *Boose* factors would apply in a civil proceeding for the termination of parental rights, but reviewing court did not need to resolve that issue as the trial court had "simply deferred to the sheriff" in ruling that the respondent would remain shackled). The

involuntary medical treatment of mental health patients implicates substantial liberty interests (*James W.*, 2014 IL 114483, ¶ 21), and thus it is clearly desirable to provide authoritative guidance regarding the use of shackles in such proceedings. See *id*. Finally, we have already held that the third prong of the public interest exception–the likelihood that the issue will recur–is met here. Thus, review of this appeal is merited under the public interest exception as well as the "capable of repetition" exception.

¶ 20 Applicability of *Boose* Factors at a Civil Commitment or Treatment Hearing

¶ 21 The respondent next argues that he was denied a fair trial when the trial court failed to remove his shackles during the second day of his involuntary medication hearing. We begin by addressing the factors that must be considered when a respondent requests the removal of shackles at a civil hearing regarding involuntary commitment or treatment for mental illness.

¶ 22 *Boose,* the seminal case in Illinois regarding the use of shackles, involved a criminal defendant who was shackled during a hearing before a jury regarding his mental competency to stand trial. *Boose,* 66 Ill. 2d at 264. Although his counsel asked that he be unshackled, the trial court denied the request, solely because of the nature of the charge against him (murder). *Id*. at 265. The jury found him competent. He challenged his subsequent conviction, on the ground that there had been no necessity to restrain him during the competency hearing and his shackles had prejudiced him in the eyes of the jury. The appellate court agreed and reversed the conviction, and the supreme court affirmed. *Id*. at 267-69.

¶ 23 The supreme court noted that shackling an accused during criminal proceedings raised three concerns: "(1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process." *Id*. at 265. These three concerns implicate different constitutional rights. *A.H.*, 359 Ill. App. 3d at 181. The first, possible prejudice in the eyes of the jury, compromises the presumption of innocence embodied in the fifth amendment to the United States Constitution. *Id*.; U.S. Const., amend. V. The second threatens the sixth amendment right to effective assistance of counsel. *Id*.; U.S. Const., amend. VI. Finally, the third concern arises most strongly from the constitutional right to due process, which requires that any proceeding to deprive a person of a substantial liberty interest must be fundamentally fair. *Id*. at 182; U.S. Const., amend. V. For all of these reasons, the use of shackles or other restraints is presumptively improper during criminal proceedings absent " 'a showing of a manifest need for such restraints.' " *Boose*, 66 Ill. 2d at 265-66 (quoting *People v. Duran*, 545 P.2d 1322, 1327 (Cal. 1976)).

¶ 24 Although there are certain important differences between criminal proceedings and civil proceedings for involuntary commitment or treatment, the latter raise many of the same concerns that are present in criminal proceedings. The first concern, the damage to the presumption of innocence, does not come into play in a civil proceeding. However, the interests implicated by the second and third concerns are highly relevant to civil proceedings for involuntary commitment or treatment. Both criminal defendants and respondents in mental health proceedings have a right to the effective assistance of counsel. This right is statutory in origin for mental health respondents, arising from section 3-805 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-805 (West 2014)) rather than the sixth amendment. However, in Illinois the same standard applies to both types of proceedings: like defense counsel in a criminal proceeding, the respondent's counsel in a mental health proceeding plays an essential role in ensuring a fair trial, and the effectiveness

of that counsel is evaluated under the analysis in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Carmody*, 274 Ill. App. 3d 46, 55 (1995); see also *In re James W.*, 2014 IL App (5th) 110495, ¶ 42. Finally, because involuntary confinement and the imposition of medical treatment implicate fundamental liberty interests (see *James W.*, 2014 IL 114483, ¶ 21; *In re C.E.*, 161 Ill. 2d 200, 213-14 (1994)), it is essential that a mental health respondent receive a hearing free from the taint of unnecessary restraints.

¶ 25 We find that, although criminal proceedings differ from civil proceedings for involuntary commitment or treatment, the concerns raised by shackling are similarly grave in both types of proceedings. Accordingly, when evaluating a request that restraints be removed during a civil proceeding for involuntary commitment or treatment, courts must apply standards similar to those used in criminal cases. It is impermissible for a trial court, even when no jury is present, to unnecessarily restrain a defendant, for it may hinder the defendant's ability to assist his counsel and "demean[ ] both the defendant and the proceedings." *Allen*, 222 Ill. 2d at 346. "Even in a bench hearing, *** shackling a defendant should be avoided absent special circumstances, *i.e.*, possible harm to others, risk of escape, or disruption of the proceedings." *Mark P.*, 402 Ill. App. 3d at 176. Although the decision to have a defendant remain in shackles is within the trial court's discretion, that decision must be made on a case-by-case basis, and the trial court *must* explicitly state for the record its reasons for not removing a defendant's shackles. *Boose*, 66 Ill. 2d at 266.

¶ 26 In *Boose*, the supreme court adopted a set of factors to be considered by the trial court when it receives a request for the removal of shackles or other restraints. Those factors (later incorporated into Rule 430) include the following: " '[t]he seriousness of the present charge against the defendant; [the] defendant's temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies[, *i.e.*, alternative security arrangements].' " *Id.* at 266-67 (quoting *State v. Tolley*, 226 S.E.2d 353, 368 (N.C. 1976)); see also Ill. S. Ct. R. 430 (eff. July 1, 2010). Of these factors, only a few–the risk of violence, revenge, or rescue by others, and the "size and mood of the audience"–are perhaps unlikely to be present in the setting of a civil proceeding for involuntary commitment or treatment. Other factors–the "charge" against the respondent and his "past record"–are relevant if read broadly to incorporate the mental health context, including the respondent's mental health diagnosis and past record of being able to conform his behavior to peaceable interaction, either in the courtroom or in other settings. (If criminal charges are pending against the respondent, the usual interpretation of these factors in the criminal context may also be considered.) A trial court faced with a request for unshackling during a civil proceeding for involuntary commitment or treatment should consider all of the relevant factors listed above. Where a trial court has taken the applicable *Boose* factors into consideration and has placed on the record the reasons for its decision, that decision to shackle a defendant is reviewed for abuse of discretion. *Allen*, 222 Ill. 2d at 348.

¶ 27 Here, the trial court did not place on the record its reasons for keeping the respondent shackled. This in itself was error. *Mark P.*, 402 Ill. App. 3d at 178 (noting "the necessity of a finding, on the record, of some factual basis for the restraints").

¶ 28 The State argues that the trial court conducted a thoughtful analysis and properly exercised its discretion in deciding that the respondent should remain shackled. We disagree. The record reflects that the respondent's counsel asked for the shackles to be removed. The trial court asked whether there was any objection. In response, a security officer stated that the respondent was listed as presenting a "high elopement risk" on a patient transport document. The trial court briefly examined the document and asked if the respondent's counsel had seen this document beforehand. She stated that she had not. The respondent interjected his own comments, stating that he wanted to be present at the hearing. The trial court denied the request for unshackling, saying only, "I will leave him in custody in the shape he is in now." Shortly thereafter, the respondent's counsel asked the trial court if the respondent's right hand could be unshackled in order to take notes. The trial court responded, "There's obviously got to be a balance of *whatever security feels is necessary* and his ability to participate." (Emphasis added.) Then, after asking the respondent which hand he wrote with, the trial court stated that it would consider the request "[i]f there [were a] need to take notes," despite the fact that the respondent's attorney had just indicated that the respondent wished to be able to take notes.

¶ 29 This record reflects essentially no consideration by the trial court of any of the relevant factors. This opinion holds for the first time that the *Boose* presumption against restraints applies in civil proceedings for involuntary commitment or treatment, and that the *Boose* factors should be considered in deciding whether a respondent must remain shackled. Thus, we do not fault the trial court for failing to apply this exact analysis. However, prior case law already had established that respondents should not be shackled absent special circumstances; had emphasized the need for a particularized determination and the placing of reasons for shackling on the record; and had identified various relevant considerations, including the risk of escape, the possibility of harm to others, and disruption of the proceedings. See *id*. at 176-77. The trial court's decision that the respondent should remain shackled did not accord with these principles.

¶ 30 Although the trial court briefly inquired into the risk of escape, upon being told that the respondent was listed on a document as a high elopement risk for transport purposes, it deferred to the assessment of the security officer and person who prepared the patient transport document.[2] The record does not reflect that the trial court engaged in any independent assessment of this factor. This was error. "It is the court's responsibility to determine whether restraints should be imposed, not the sheriff's or his agents'." *Id*. at 177.

¶ 31 Similarly, the record does not reflect any consideration by the trial court as to whether shackling was necessary to prevent disruption of the proceedings. Although the record reflects that the respondent was verbally disruptive during the initial inquiry into shackling,

[2]The State argues that the respondent forfeited any argument regarding the document tendered to the court by the security officer because the document was not admitted into evidence and is not part of the record on appeal. However, the record does contain the trial court's identification of the document as a patient transport list and the security officer's statement that the document listed the respondent as presenting a high risk of escape (a statement that was not contradicted by the trial court, which reviewed the document). This description is sufficient to permit review of the respondent's argument because the actual content of the document is not in question. Rather, the issue is whether the trial court conducted its own assessment of the need for shackles or simply deferred to the security officer and the author of the document.

there is no indication that releasing him from his shackles was likely to worsen these verbal disruptions or result in any physically disruptive conduct. To the contrary, the record suggests that keeping the respondent shackled *increased* the verbal disruptions: the respondent was unable to write notes for his attorney and thus was obliged to speak any comments he wished to have noted, and remaining shackled appears to have increased the respondent's agitation and his propensity to interrupt the proceedings.

¶ 32 As to the third factor identified in *Mark P.*, the possibility of harm to others, the trial court does not appear to have considered this factor at all. The underlying petition to medicate the respondent does not provide any support for inferring that such harm was likely: it alleged only that he was suffering and his mental state deteriorating, not that he had exhibited any violent behavior.

¶ 33 Because the trial court did not explicitly make any findings supporting shackling and the record demonstrates that the trial court conducted almost no independent assessment of the factors involved in the shackling decision, we find that the trial court abused its discretion in ordering that shackling. *Id.*

¶ 34 Harmless Error

¶ 35 The State argues that, even if the trial court erred by failing to conduct its own assessment of the necessity of shackling, any such error was harmless. To establish that an error was harmless, the State must prove, beyond a reasonable doubt, that the shackling complained of did not contribute to the judgment. *A.H.*, 359 Ill. App. 3d at 183.

¶ 36 In *Mark P.*, this court viewed the trial court's error in handcuffing the respondent as having two potential effects: that of hampering the respondent in the presentation of his defense, and that of prejudicing the trial court. *Mark P.*, 402 Ill. App. 3d at 178. Here, the trial court's refusal to allow the unshackling of the respondent's right hand unquestionably prevented him from writing notes for his attorney. Moreover, the respondent's comments indicate that being in shackles agitated him, decreasing his ability to focus on the proceedings. Indeed, his complaints about the shackles were the cause of his eventual removal from the courtroom. The record also suggests that the second factor, prejudice in the eyes of the fact finder, might have occurred as well: the trial court stated that its decision to order further medication of the respondent rested in part on the respondent's "outbursts in the courtroom" displaying animosity. These outbursts were related in part to the shackling. Thus, the record does not show, beyond a reasonable doubt, that the error did not contribute to the trial court's decision. We conclude that the error was not harmless.

¶ 37 CONCLUSION

¶ 38 We find that the appeal is not moot, that the trial court abused its discretion by keeping the respondent shackled without considering the relevant factors and placing its reasons on the record, and that this error was not harmless. Accordingly, we reverse the judgment of the trial court.

¶ 39 Reversed.